
(2003) 01 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

J.GOPAL

APPELLANT

Vs

NAGARJUNA BLOOD BANK

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Citation : 2003 2 CPJ 434

Hon'ble Judges : P.Ramakrishnam Raju , Mamata Lakshman J.

Final Decision : Complaint partly allowed with costs

Judgement

1. THE complainant's son Master Akshay aged about 11 months was admitted in the 2nd opposite party hospital for complaint of loose motions. After treatment he was discharged on 13.8.1997. Again on 31.8.1997 the boy was admitted for complaint of fever and cough. He was under the treatment of Dr. P. Madan Mohan Rao of opposite party No. 2 hospital who diagnosed the disease allergic breathlessness and anaemic. Since the body was anaemic the doctor advised blood transfusion and accordingly as per the advise of the said doctor the complainant approached opposite party No. 1 Blood Bank on 1.9.1997 along with donor Mr. J. Narsing Rao. Opposite party No. 1 after conducting necessary tests informed that the blood of the donor is suitable to the patient and that the blood was good and accordingly issued a Donor Card wherein it was clearly mentioned that "H.I.V. I & II Negative". Accordingly opposite party No. 1 Blood Bank collected the blood from the donor, received Rs. 425/- towards charges, packed the blood of the donor and handed over the same to the complainant for transfusion to the patient. THE second opposite party after going through the reports furnished by the opposite party No. 1 transfused the blood to the complainant's son who was discharged from the hospital on 3.9.1997 after collecting Rs. 2,975/- towards hospital bill. However as there was no improvement in the condition of the boy, Dr. P.M.M. Rao advised the complainant to consult Dr. P.S. Murthy of M/s. Mahaveer Hospital and Research Centre, Masab Tank, Hyderabad. THE boy was admitted in the said hospital for treatment on 6.10.1997. As blood test was advised by Dr. P.S. Murthy, the complainant got his son's blood examined by M/s. Pooja Pathological Laboratory Diagnostic Service,

Vijayanagar Colony, Hyderabad. On 8.10.1997 the complainant on seeing the reports came to know for H.I.V. test it is reactive in screening assay. Mahaveer Hospital discharged the patient but advised for testing of "H.I.V. Western Blot Test (AID)" at Nizam's Institute of Medical Sciences. NIMS also by their report confirmed the same. THE opposite party No. 1 negligently conducted H.I.V. I & II test and gave an incorrect report. THE opposite party No. 2 without verifying the correctness of the report issued by opposite party No. 1 transfused the blood to the patient which resulted with the boy contracting most dreaded disease i.e., for which there is no cure. Instead of keeping quiet the complainant is using Ayurvedic medicines without any hope and there is no improvement in the condition of the boy. Hence the complainant issued notice to both the opposite parties claiming a compensation of Rs. 10 lakhs and filed the complaint.

2. IN the written version filed by the 1st opposite party it is stated that when the complainant brought one Mr. Narsing Rao, a prospective donor, the 1st opposite party drew the blood sample from the donor, tested and cross-matched the same with the blood of the recipient and found it suitable for transfusion. It screened the donor's blood carefully but could not find any evidence of Antibodies for either HIV type I or II. The rest procedure used for detecting the aforesaid antibodies HIV I + II Immunodot Test Kit Combaids-RS is sensitive and 100 per cent accurate. IN view of the accuracy of the test in detecting the presence of antibodies for HIV the complainant cannot contend that his son was attacked with AIDS through transfusion of blood supplied by opposite party No. 2. IN view of the past history of diarrhoea and repeated chest infections the child could have been possibly infected with H.I.V. virus much before blood transfusion. It is much probable that the complainant might have suppressed earlier transfusion of contaminated blood or the blood might have got infected at the time of birth or through contaminated needles earlier. IN the case of Narsing Rao the test is conducted by Enzyme Linked Immuno Assay (Elisa) of IG G, type. The report issued by NIMS further recommends that the same has to be confirmed by Western Blot technique. The second opposite party in a separate counter while admitting the treatment given to Akshay as alleged by the complainant stated that the Blood Banks are licensed by the Drug Controller which is the Licensing Authority of the Government to draw the blood, screen and supply the same after complying all the statutory requirements. The Blood Banks before issuing compatibility certificate are supposed to check the blood for all blood transmitted diseases and the receiving hospitals are supposed to believe the genuineness of the certificates issued by the Blood Banks. Hence placing reliance on the certificate issued by the first opposite party is not deficiency in service. The complainant filed Exs. A1 and A25 besides filing his affidavit. The opposite party No. 2 filed counter and affidavit, but no documents filed by either of the opposite parties.

Hence the point for consideration is whether there is any deficiency in service on the part of the opposite parties, and if so, to what extent.

3. THE controversy lies in a narrow compass. It is admitted that the first opposite party collected the blood sample from Narsing Rao, brother of the complainant on 1.9.1997 and gave a donor card stating that "H.I.V. I & II negative" marked as Ex. A6. Under Ex. A5 the first opposite party issued a certificate dated 1.9.1997 that J. Narsing Rao has donated one unit of blood in their Blood Bank of group A-positive. On the basis of the said report the said unit of blood was transfused by the second opposite party hospital and the boy was discharged on 3.9.1997. As there was no improvement, the boy was again taken to the opposite party No. 2 hospital where he was advised to take his son to Dr. P.S. Murthy of M/s. Mahaveer Hospital and Research Centre, Masabtanki, Hyderabad. Accordingly the complainant admitted his son in the said hospital on 6.10.1997. Dr. P.S. Murthy of the said hospital advised for blood test and the complainant got his son's blood tested at M/s. Pooja Pathological Laboratory Diagnostic Service. THE said laboratory issued a report, Ex. A11 dated 8.10.1997 showing "Antibodies to HIV (I & II) : reactive in screening assay" advising western blot or other similar technique for confirmation of diagnosis. Under Ex. A12 dated 20.10.1997 Nizam's Institute of Medical Sciences conducted Western Blot (HIV 1+2) test and found that western blot test positive for HIV 1 showing bands representing proteins of ENV Genes GP 16". THE complainant also filed Exs. A14 and A15, reports from NIMS to show that the complainant and his wife tested "HIV non reactive" with a view to eliminate the possibility of the child containing the disease from the parents. From this material it is clear that the child got the virus transmitted through transfusing one unit of blood collected from J. Narsing Rao certified by the first opposite party under Donar Card, Ex. A6. THE donor was also tested on 4.11.1997 at NIMS and the report reveals that HIV I & II (ELISA) - reactive, Ex. A13 which also supports the view that the child contacted the disease after blood transfusion. Hence we are of the view that the Donor Card issued by the 1st opposite party under Ex. A6 is incorrect. As the Blood Bank has given the Donor Card negligently without examining properly the blood of the donor we are of the opinion that there is deficiency in service on the part of the first opposite party. So far as the second opposite party is concerned it is seen that they merely relied on the Donor Card issued by the Blood Bank. The learned Counsel for the complainant Mr. V. Gowrisankar Rao submits that the second opposite party also committed deficiency in service in not verifying the report/Donor Card issued by the opposite party No. 1. The second opposite party sought for examination of the compatibility of the donor's blood as well as its reliability. In view of the report of the first opposite party Blood Bank, we are of the opinion that no further obligation is cast on the opposite party No. 2 to cross-check the correctness of the said report. Hence we cannot fasten any negligence on the part of the second opposite party. We, therefore, hold that there is no deficiency in service on the part of the New Citi Hospitals, Secunderabad, the second opposite party.

4. THE next question is, what are the damages that should be awarded. It is reported that the donor died. It is also stated that there is no improvement in

the child. But the fact remains that the child is a patient and has not recovered. Though it is alleged by the learned Counsel for the complainant that the possibility of recovery of the child is remote i.e., in other words the child can never be a normal child still; what will be the outcome of scientific research going on throughout the world on hunt for a cure for such a dreaded disease is anybody's guess. At this stage we cannot predict whether the child will become normal or not. But as on today we are of the opinion that the child has not recovered and requires medical care, attention and treatment. Under these circumstances we are of the opinion that a sum of Rs. 1 lakh payable with interest at 12 per cent from the date of the filing of the complainant together with a sum of Rs. 425/- being the charges collected by the first opposite party would meet the ends of justice. In the result, the complaint is allowed in part as indicated above with costs of Rs. 5,000/-. However, it is open to the complainant to seek for review of this order in future depending upon the facts or the future circumstances or subsequent events. Complaint partly allowed with costs.